



# **San Diego City Attorney MICHAEL J. AGUIRRE**

## **NEWS RELEASE**

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### **CITY OF SAN DIEGO WINS DE LA FUENTE CASE VICTORY IN COURT ELIMINATES \$300 MILLION CLAIM**

**San Diego, CA**—In a stunning reversal of legal fortunes, the City of San Diego has emerged victorious from its fifteen year legal war with South Bay developer Roque (Rocky) De La Fuente.

After a hearing today, San Diego Superior Court Judge Linda B. Quinn ruled that De La Fuente's allegation that the City breached a 1986 development agreement cannot proceed to trial because of his non-compliance with government claims procedures. That order dismisses De La Fuente's remaining claim against the City stemming from his Otay Mesa Business Park, variously known as Border Business Park or De La Fuente Business Park.

In 2001, a jury awarded De La Fuente \$94.5 million in damages on his assertion that the City's actions drove the park into bankruptcy. That liability later ballooned to about \$150 million with interest, and De La Fuente sought an additional \$30 million in attorney's fees. Since then, the City has chipped away at the judgment in a series of court rulings and the latest order leaves nothing left of De La Fuente's case.

"We are righting San Diego's legal ship," said City Attorney Michael Aguirre, who inherited the \$122 million De La Fuente judgment from his predecessor Casey Gwinn. "We knew the City was blameless here and we stuck to our guns," Aguirre said.

Outside counsel for the City, Kristine Wilkes of Latham & Watkins LLP, credited the leadership of Aguirre and the City Council in achieving the victory.

"It would have been safe and politically expedient to bury this case under a settlement, but the City's leaders refused to give in to De La Fuente's extortionate demands," Wilkes said. "I applaud them for their courage."

Wilkes said that De La Fuente's settlement demands had exceeded \$300 million in recent months. "Mr. De La Fuente's entire modus operandi is to sue the government on spurious claims and hope to settle. It is gratifying to see justice prevail," Wilkes commented.

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### ***A Fifteen Year Legal Saga***

Today's victory for the City culminates a legal war dating back to 1993. The first shot was filed by the City, which sued De La Fuente after he failed to pay assessments owed under the 1986 development agreement. De La Fuente countersued alleging the City breached the agreement, and the parties settled. After De La Fuente failed to pay under the settlement, the City sued again, and De La Fuente countersued once more. This time De La Fuente's case was thrown out for failure to follow the government claims procedure.

In 1995, De La Fuente sued the City yet again, repeating his claim of breach of the development agreement. In late 2000, after a three week trial, Judge DiFiglia found the City liable for taking De La Fuente's property. The jury then awarded De La Fuente \$94.5 million in damages. The jury found that the City had breached the development agreement causing \$29.2 million in damages, and that the City had further damaged the business park by routing truck traffic past the park to the Otay Mesa Port of Entry, and by considering a possible bi-national airport to be located in that area.

Within days after the verdict, the *San Diego Union Tribune* reported that the trial judge previously had been privately admonished by the state agency charged with investigating judicial misconduct for failing to disclose a personal relationship with De La Fuente's trial lawyer, Bartolotta. Judge DiFiglia then disclosed that he had since received additional gifts from Bartolotta, and that he had a dating relationship with Bartolotta's assistant which had continued during the Border trial. Judge DiFiglia then withdrew from the case. On January 9, 2007, the Commission on Judicial Performance publicly admonished Judge DiFiglia for his non-disclosure in the Border case, saying that his conduct "was, at a minimum, improper."

After the entire San Diego Superior Court bench disqualified itself, the case was sent to Orange County Superior Court. The City moved to set aside the verdict. Judge Raymond J. Ikola ordered a new trial on the breach of contract claim, but left standing the rest of the verdict, and entered a \$122 million judgment against the City.

The City appealed the judgment and De La Fuente appealed the new trial order. In a decision filed September 19, 2006, the California Court of Appeal reversed the judgment on the truck routing and airport planning claims, finding that the City had not taken the Border property, and ordered judgment for the City. The Court sent the contract claim back for a new trial, rejecting De La Fuente's argument that the development agreement excused compliance with the government claim filing requirements.

Despite this loss, De La Fuente increased his settlement demands on the City, valuing his claims in excess of \$300 million. As the Border case proceeded through the courts, De La Fuente sued the City twice more. He had transferred parts of Border Business Park to other of his entities, National Enterprises and Otay Acquisitions, and in 1999 and 2000, they filed lawsuits alleging the same claims already made by Border.

The National and Otay cases were assigned to Judge Quinn. After the Border appeal, that case was sent to her, as well. On November 17, 2006, Judge Quinn dismissed the National and Otay cases, finding that De La Fuente had not complied with the government claims procedures. Judge Quinn's ruling today applied  
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the same rule to dismiss the rest of the Border case.

***Court's Dismissal a Timely Reprieve for the City***

The Court's dismissals are not likely to end the legal wrangling. De La Fuente already has filed appeals in National and Otay. Not only does the victory in the De La Fuente cases lift the specter of crippling liability for the City, but the development agreement provides the victor with the right to recover its attorney's fees and litigation costs. The City already has been awarded about \$1.3 million in fees against De La Fuente in the Otay and National cases, and the City will be seeking another \$8 million for its costs in defending the lengthy Border case.

To view the court ruling, visit [www.sandiegocityattorney.org](http://www.sandiegocityattorney.org), click "Significant Reports and Legal Documents."

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